IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Uma Shanker Tripathi
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.5174/1993
UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 18th September, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Miss.Rekha Borana, Advocate for the petitioner.
Mr Rameshwar Dave, Dy. Govt. Advocate.
Mr.S.G. Ojha, Advocate for the respondents.

BY THE COURT

The petitioner has preferred this writ petition with the prayer that respondent No.4 which is a private institution namely Shri Nehru Bal Vatika Senior Higher Secondary School, Nohar District Sri Ganganagar may be directed to take the petitioner on duty and to continue to pay him the salary admissible to similar

teachers in the Government institutions and they may further be directed to give effect to the settlement Annexure-3 by requiring the respondent No.4 to regularize the services of the petitioner and to treat him as permanent employee of the respondent No.4 and the State may be directed to take suitable action against institution for victimizing the petitioner and also to stop grant-in-aid if the institution does not comply with the direction of Education Department.

Miss Rekha Borana, learned counsel for the petitioner has argued that the petitioner was appointed on the post of Teacher by respondents No.4 and 5 vide order dated 06th July, 1988. He was continued in their employment for the academic sessions 1989-90, 1990-91, 1991-92 and 1992-93. The respondents used to give him breaks during summer vacations which was contrary to the settled proposition of law. Her services were however terminated from 15th May, 1993. She has relied on a settlement arrived at between the employees of the respondents institution and its management in the presence of SDO, Nohar, wherein it was agreed upon between the parties that management will regularize services of petitioner but instead of doing so, the respondents removed the petitioner from service within three months thereof. Learned counsel for the petitioner also argued that there are still vacant posts available with the respondent

school on which the petitioner can be accommodated and therefore alternatively argued that the respondents may be directed to consider his case for appointment afresh because the petitioner had already attained the age of 34 years when he was lastly removed from services and has now become over age and cannot get employment anywhere.

On the other hand, the writ petition has been contested by the respondents who in their reply to the writ petition have contended that the appointment of the petitioner was always made on temporary basis and for limited duration as and when required. It was argued that even though the respondents institution was a private institution yet, they are making such appointment by issuing advertisement and as such advertisement was issued on 27th May, 1993 but petitioner did not apply in response to such advertisement and therefore he cannot hold the respondents responsible for his non-appointment for the relevant academic year. The petitioner could not be continued in service for this reason. The petitioner cannot now agitate this issue as he is estopped from raising the same by his own conduct in not applying in pursuance to the advertisement. The selection committee selected another candidate in place of the petitioner and therefore this writ petition is liable to be dismissed. Learned counsel for the respondents further argued

that there is no vacant post available to accommodate the petitioner at this belated stage. It was therefore argued that the writ petition may be dismissed.

I have heard learned counsel for the parties and perused the record.

This writ petition was filed by the petitioner way back in the year 1993. The petitioner's basic grievance is against the private school run by the respondents No.4 and 5. Appointment of the petitioner was not made by any regular mode of selection. He was engaged temporarily for a particular academic sessions and in this manner, he continued to serve the respondents for about five years. The respondents contended that the petitioner did not apply in response to the advertisement and the post on which he was earlier working was filled in by appointing another person on recommendation of the selection committee.

In these circumstances, therefore, no relief can be granted to the petitioner. He may however make a representation to the respondents No.4 and 5 requesting them for his fresh appointment and as and when such representation is made, it is expected from respondents to consider the same dispassionately and decode the same expeditiously under intimation to the

petitioner.

With these observations, the petition is disposed of. There shall be no order as to costs.

[MOHAMMAD RAFIQ],J.

Ashwini/-